

**APPROVED**

**BOARD OF DENTISTRY  
MINUTES OF BOARD MEETING**

**Friday, March 3, 2006**

**Department of Health Professions  
6603 West Broad Street, 5<sup>th</sup> Floor  
Richmond, Virginia 23230-1712**

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- CALL TO ORDER:** A meeting of the Virginia Board of Dentistry was called to order at 9:08 a.m.
- PRESIDING:** Harold S. Seigel, D.D.S., President
- MEMBERS PRESENT:** Meera A. Gokli, D.D.S.  
Jacqueline G. Pace, R.D.H.  
Darryl J. Pirok, D.D.S.  
Edward P. Snyder, D.D.S.  
James D. Watkins, D.D.S.  
Glenn A. Young, D.D.S.  
Paul N. Zimmet, D.D.S.
- MEMBERS ABSENT:** Misty L. Sissom, RDH  
Millard D. Stith, Jr.
- STAFF PRESENT:** Sandra K. Reen, Executive Director  
Patricia L. Larimer, Deputy Executive Director  
Cheri Emma-Leigh, Operations Manager  
Elaine Yeatts, Senior Policy Analyst
- COUNSEL PRESENT:** Howard Casway, Senior Assistant Attorney General
- QUORUM:** With eight members of the Board present, a quorum was established.
- PUBLIC COMMENT:** None.
- APPROVAL OF MINUTES:** Dr. Seigel asked if everyone had a chance to review the minutes. Dr. Zimmet moved to approve the Minutes of the Formal Hearings of December 8, 2005, with an amendment requested by Mr. Casway to correct the name "Dr. Pollock" to "Dr. Coleman" on page number 11. The motion passed. Dr. Zimmet moved to approve the Minutes of the Board Meeting of December 9, 2005. The motion passed. Dr. Zimmet moved to approve the Minutes of the Formal Hearing of December 9, 2005. The motion passed. Dr. Zimmet moved to approve the Minutes of the Telephone Conference Call of January 24, 2006. The motion passed.

**REPORTS:**

**Board of Health Professions:** Dr. Seigel offered to circulate the minutes of the last BHP meeting to anyone interested. He noted there is information on the Enforcement Committee, the Executive Committee and the Regulatory Research Committee that might be of interest.

**Executive Committee:** Dr. Seigel stated that the following two (2) issues were discussed at the Committee meeting on March 2, 2006: `

- **Designating Agency Subordinates:** Dr. Seigel stated that the Committee decided to invite the six (6) most recent past Board members to serve as an agency subordinate for the Board.
- **License Certificate Production:** Dr. Seigel stated that the Committee discussed the staff's request to use the DHP contract for wall certificates and decided not to make the change. Ms. Reen explained by way of information that all of the boards in DHP, with the exception of Dentistry, have their certificates produced under the same contract which provides for laser printing. Dentistry has a separate contract with a calligrapher.

**Regulatory-Legislative Committee:** Dr. Snyder reported that the Committee discussed three (3) letters concerning advertising issues and deferred those matters for discussion by the Board today. The Committee also discussed:

- The meaning of morbidity in the regulation requiring reporting of adverse reactions which result from the administration of sedation, anesthesia or inhalation analgesia. The Committee is recommending that guidance be issued using the Board of Medicine's regulatory language which requires reporting when a patient is transported to and stays in the hospital for at least 24 hours.
- Whether or not to continue the regulatory action on expanded duties for dental assistants and decided to pursue legislation and then regulations. Dr. Snyder stated that the Committee will be working with an Ad Hoc Committee, including a representative from the Virginia Dental Association, Virginia Dental Hygiene Association, the Commonwealth Dental Hygienists Association and the Virginia Dental Assistants

Association.

- The need for a guidance document on advertising which two (2) members, Dr. Watkins and himself, agreed to develop.
- A letter from Robert McNichols who was concerned that due to changes in the Board's regulations, his dentist would not be able to administer nitrous oxide. Dr. Snyder reported that it was agreed that requiring a 2 person team was a reasonable requirement to protect the public so no change is recommended.

**Examination Committee:** Dr. Young reported that the Committee discussed reinstituting the jurisprudence examination, and decided not to take any action. He also reported that the Committee discussed The Department of Education request to reinstitute the Radiation Safety Exam and decided to recommend against reinstituting it.

**WREB Exam:** Dr. Watkins stated he was unable to attend the examination in December but the information he received showed that the WREB Exam is properly validated and administered. He supports continued acceptance by the Board.

**AADE Mid-Year Meeting:** Dr. Watkins reported that he would be attending the meeting in place of Dr. Pirok and would attend the meeting of the Coalition of Independent Testing Agencies. It was noted that Dr. Zimmet agreed to attend the National Dental Examiners Advisory Forum on behalf of the Board.

**SCDDE Annual Meeting:** Dr. Zimmet stated there were 16 schools and 14 Boards attending. He further reported that:

- LSU School of Dentistry was destroyed by Hurricane Katrina and a new school is being built,
- South Carolina is inviting students to attend their Board meetings,
- Tennessee found that more dental assistants from the rural area were attending their courses for expanded duties than those in the suburban area, and
- South Carolina is offering incentives for dentists to relocate in the rural areas.

**Mission of Mercy:** Dr. Pirok reported that he volunteered in the

Mission of Mercy efforts in New Orleans, Louisiana during the week of February 6 – 12, 2006. Also, Dr. Pirok stated there are three (3) major MOMs projects coming up in Virginia with one being held on March 18, 2006 in Eastern Shore.

Ed Griggs, D.D.S. spoke about the Mission of Mercy project in New Orleans and stated that:

- over 474 dentists, dental hygienists, dental assistants and other volunteers participated in this event
- VDA took the lead in this effort
- there were 44 dentists, 6 dental hygienists, and 20 dental assistants from Virginia.

Dr. Pirok asked the Board to set up a committee to prepare for responding to an emergency. Ms. Reen asked Mr. Nebiker to share with the Board how Virginia is addressing emergency preparedness. Mr. Nebiker explained that the Department of Health Profession's role in emergency preparedness is to collect emergency contact information and that at the time of renewals, licensees are able to update their contact information. He also stated that when there is a federally declared emergency, there is a federal law, which allows anyone licensed in the country to practice in the areas affected. Mr. Nebiker explained that the Department has several data backup plans in the event of an emergency. Dr. Snyder moved that the Board write a letter to the Louisiana Board of Dentistry thanking them for allowing this Mission of Mercy to happen. The motion passed.

## **LEGISLATION AND REGULATION:**

**Legislation in the 2006 Session:** Ms. Yeatts provided a list of several bills that the Department of Health Professions is following. Ms. Yeatts discussed:

- HB 1486 which enables applicants and respondents in disciplinary cases to request summary case decisions in lieu of administrative proceedings and
- HB 1501 which provides for the use of confidential advisory letters to close disciplinary cases.

She also distributed a copy of HB 996, which allows dental hygienists to administer Schedule VI nitrous oxide analgesia and local anesthesia under a dentist's direction.

**Return Check Fee:** Ms. Yeatts stated that § 2.2-614.1 of the Code of Virginia necessitates that the returned check fee in the Board's regulations be increased from \$25 to \$35. She stated that

the Administrative Process Act allows the Board to make this change without going through the full regulatory process. Dr. Watkins moved to change the returned check fee from \$25 to \$35. The motion passed.

**Response to petition to accept other examinations prior to January 2005:** Ms. Yeatts discussed the Petition for Rule-making filed by Dr. Gibson that would allow dentists who had taken NERB, SRTA, CRDTS and WREB on or after January 1, 2000 and have not been in practice for five years, to obtain licensure in Virginia. Mr. Casway advised that the Board's decision to accept the NERB, CRDTS and WREB exams was made administratively so there is no regulation to amend. Dr. Young asked why not grant the petition. Mr. Casway stated that policy is decided prospectively. Ms. Reen advised that the Board denied a similar petition for allowing one year before the January 1, 2005 effective date of the policy. Dr. Zimmet moved to reject the petition. The motion passed.

**Status of all regulatory actions:** Ms. Yeatts reviewed current regulatory actions and stated that the Board will need to adopt final regulations on licensure by credentials, etc. before its next scheduled meeting in June so they might be in effect before the emergency regulations expire. Dr. Snyder moved to allow the Executive Committee to adopt the final regulations provided there are no substantive changes needed as a result of public comment. The motion passed. The Executive Committee agreed to meet on April 14<sup>th</sup> at 8:30 a.m. to address the regulations.

**BOARD DISCUSSION:**

**Testing Agency Acceptance and Participation:** Dr. Seigel noted that the Board has in its agenda package several pieces of correspondence about a national examination and about testing agencies which are:

- a letter dated October 19, 2005 from ADEX
- a letter dated October 10, 2005 from the Council of Interstate Testing Agencies.
- a letter dated October 10, 2005 from the Coalition of Independent Testing Agencies ("CITA").
- a letter dated November 4, 2005 from WREB on acceptance of clinical exams.
- a letter dated January 23, 2006 from CITA requesting recognition.
- a notice from SRTA regarding their 2006 annual meeting, and

- Information from Dr. Harris about ADEX.

Dr. Zimmet stated that Virginia is the only state that is not a member of a testing agency and suggested that the Board join all four of the regional testing agencies. Dr. Watkins stated that the Board had already decided to send Board members to each of the testing agencies' annual meetings. He suggested just joining SRTA and WREB since they test in Virginia. Dr. Zimmet moved to have the Board request membership in CRDTS, NERB, SRTA and WREB. The motion passed. Ms. Reen was asked to also contact ADEX for information on membership. Contacting CITA was considered then tabled. Ms. Reen asked if the intent of the motion on the regional testing agencies was for her to obtain information about membership for Board consideration and she was told yes.

Dr. Seigel asked who was interested in attending the SRTA Annual Meeting to be held on August 12 and 13, 2006. The members who expressed interest were Dr. Seigel, Dr. Gokli, and Dr. Pirok. It was decided to delay a decision on attendance until membership is addressed.

**Inquiry about Radiation Safety Examination from the Department of Education:** Dr. Snyder made a motion on behalf of the Regulatory-Legislative Committee to deny the request to reinstitute the examination. The motion passed. Ms. Reen was asked to explain that the Board felt the options currently available were better options for assuring that a student is adequately prepared.

**Request about Nitrous Oxide from Mr. McNichols:** In a letter dated February 11, 2006 Mr. McNichols reported that he would not be able to receive nitrous oxide from his dentist because of the new regulations. Mr. McNichols would like the Board to consider allowing patients to sign a waiver saying they understand the risks. Dr. Snyder moved on behalf of the Regulatory-Legislative Committee that the Board make no change to its requirements for the administration of nitrous oxide. The motion passed.

**Request for Clarification of General Supervision from Dr. Watkins:** Dr. Watkins stated he has gotten questions about dentists instructing dental hygienists to begin treatment when the dentist is late coming back from lunch or late getting to work. He stated this does not conform to the regulations and asked the

Board to address the problem on its web page or in a newsletter. Ms. Reen advised she would address this in the next newsletter. She was asked to distinguish between clinical and non-clinical duties in the article.

As a point of information, Dr. Watkins stated that he recently learned that a dentist can write Schedule VI drugs without a DEA license.

**Requirement for Report of Adverse Reaction:** Dr. Snyder stated that the Committee reviewed the Board's regulation, 18 VAC 60-20-140 and several definitions of morbidity. Dr. Snyder moved on behalf of the Regulatory-Legislative Committee to issue a guidance document using the Board of Medicine's language on a hospital stay to explain when to report on morbidity. The motion passed.

**Posting Notice on the Web when No Violation is Found:** Dr. Watkins questioned why notices were being posted on the web when a dentist had been exonerated. Ms. Reen explained that the Freedom of Information Act makes the documents public and that it was the DHP's practice to post them. The consensus of the discussion was that seeing "yes" in red under "subject to a proceeding" creates a negative perception which may be unfair to the licensee. After discussion, Dr. Seigel stated he would take this matter up with the Board of Health Professions.

**AADE Annual Meeting:** Dr. Seigel stated the AADE 123<sup>rd</sup> Annual Meeting will be held in Las Vegas, Nevada on October 14-15, 2006. Dr. Seigel asked who was interested in attending this meeting. The members who expressed interest were Dr. Seigel, Dr. Zimmet, Dr. Snyder, and Dr. Watkins. Mr. Casway also requested to attend. Ms. Reen advised that the agency's guidance on travel has been to limit travel to outside meetings to two (2) people and that Governor Kaine has already cautioned agencies to limit travel. Dr. Seigel asked Ms. Reen to submit a request for everyone interested in attending.

**AADE Position Statement:** Ms. Reen advised that the AADE's non-dues revenue policy was distributed for information, no action is needed.

**Invitation from Dr. Link, D.D.S.:** Ms. Reen noted that Dr. Link is



inviting Board members to attend the VDA Task Force meeting on March 31, 2006 to hear presentations by ADEX and WREB. Dr. Gokli stated that she and Dr. Young are on the Task Force. Ms. Reen noted that DHP discourages members serving on groups that are addressing matters that may come before the Board. Mr. Casway explained that, unless the Board asked the member to serve as its representative, participation could be perceived as a conflict or as improper conduct.

**BOARD COUNSEL  
REPORT:**

**Litigation:** Mr. Casway asked the Board to enter into a closed meeting to discuss matters pertaining to the pending litigation with Drs. Kirksey, Lennon, Petka, and Coleman.

**Closed Meeting:** On a properly seconded motion by Dr. Zimmet, the Board entered into a closed meeting pursuant to § 2.2-3711(a)(7) of the Code of Virginia for consultation with legal counsel pertaining to actual or probable litigation. Additionally, it was moved that Board counsel, Howard Casway, and Board staff, Sandra Reen, Patricia Larimer and Cheri Emma-Leigh attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

**Reconvene:** On a properly seconded motion by Dr. Zimmet, the Board agreed that only public matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board.

By motion by Dr. Zimmet, Mr. Casway was authorized to negotiate a settlement by consent order of the litigation brought by Dr. Kirksey.

**Advertising:** Ms. Reen noted that the Board had deferred action on three letters about advertising until it had discussed the pending litigation about advertising. The Board took the following actions on the letters:

- Adopted a motion by Dr. Zimmet to advise Dr. Supan that the use of “certified” is acceptable so long as its use is truthful.
- Adopted a motion by Dr. Gokli to advise Dr. Martin that naming his practice “Richmond Smile Center” is acceptable.
- Adopted a motion by Dr. Snyder to advise Dr. Callahan that the two advertisements he asked about in regards to claims of



superiority were acceptable so long as his assertions about the contents of the advertisements were truthful.

The lack of public concern with advertising issues, the variety of advertisements in the Yellow Pages and the confusion that exists among dentists about acceptable practices was discussed. Dr. Watkins requested that the Board consider making changes to the laws and regulations regarding advertising. Dr. Seigel referred this matter to the Legislative/Regulatory Committee.

Ms. Reen was asked how the Board might limit the amount of time being spent on advertising cases. She suggested that all advertising complaints moving forward after probable cause review should go to an agency subordinate. In addition, she suggested having the Intake Analyst submit all advertising complaints for review by the Board before they are investigated to see if the allegation is made with enough substance to determine if the advertising is actually false, deceptive or misleading. She noted that these would be off-line cases which the President of the Board reviews. Dr. Snyder moved to implement these changes immediately. The motion passed.

**Substance Abuse Training:** Mr. Casway gave a brief overview of his Power Point presentation on the Disclosure of Substance Abuse Treatment Information in Notices and Orders. He stated that if information obtained by the Department is accompanied by the written statement set forth in 42 C.F.R. § 2.32, then the substance abuse regulations' prohibitions on disclosure are applicable. Allegations and findings of fact can disclose information about substance abuse treatment if the respondent, as opposed to the treatment records, is the source of the information.

**EXECUTIVE  
DIRECTOR'S REPORT:**

**Newsletter:** Ms. Reen stated that she has at Dr. Seigel's urging begun work on the newsletter. Ms. Emma-Leigh has staff preparing the disciplinary case listing for the period beginning January 2002 through December 2005. Dr. Watkins asked if the disciplinary information could just be posted on the website. Ms. Reen stated that the Board had moved in a previous Board meeting to list all disciplinary cases in the newsletter by names and sanctions. She also reported that the Board Of Medicine was posting its newsletters on their webpage and sending out postcards that a new one is available. Dr. Watkins moved that the upcoming newsletter be mailed out with an announcement that

disciplinary action reports are available on-line and that future newsletters will be available on the website and notification will be sent out when a newsletter is published. The motion passed. Ms. Reen agreed to make hard copies of the newsletter available by request.

**Introduction of new Deputy Executive Director:** Ms. Reen introduced Patricia L. Larimer as the Board's new Deputy Executive Director. Ms. Larimer received a B.A. degree in Political Science and has 15 years experience with a law firm in Greenville, South Carolina, one (1) year with a law firm in Virginia, and ten (10) years as an Adjudication Specialist with the Department. Ms. Larimer's primary responsibility is to handle disciplinary cases for the Board. Ms. Reen stated when completing the Complaint Resolution form, it is important that Board members comment on what caused them to make the decision they made regarding the case, and to answer any questions on the form staff.

**Notice of Prescription Blank Changes:** Ms. Reen stated that after July 1, 2006, all licensees wanting to prescribe brand name drugs must conform to the new prescription blank changes. These changes require that the prescriber put the phrase "Brand Medically Necessary" on the prescription. Prescription blanks with "Dispense as Written" and "Virginia Voluntary Formulary" boxes can still be used but checking the boxes will not assure a patient receives the intended drug.

**Draft Proposal for Uniform Sanctions:** Ms. Reen stated that at the last Board meeting, she was asked to draft guidance documents for Practicing with an Expired License, and Failure to meet Continuing Education Requirements. There was discussion about whether 30 days was an adequate time allowance for repeat offenders to obtain missing continuing education and discussion on deferring action until the next meeting. Dr. Zimmet moved to adopt the proposals as guidance documents. The motion passed.

**Status of Dental Assisting Program at Tidewater Tech:** Ms. Reen noted that the letter from the ADA regarding the status of the dental assisting program sponsored by Tidewater Tech Norfolk is provided as information, no action is needed. It provides notice that the Commission on Dental Accreditation intends to withdraw the program's accreditation at the Commission's July 28, 2006 meeting unless the program achieves full compliance by that time.

**License Plates:** Ms. Reen stated that if Board members have specialty license plates for the Board of Dentistry, they should keep in mind that the plates are not renewable once you leave the Board. DMV does not send out a license plate renewal notice to members whose terms on the Board have expired.

**By-Laws:** Ms. Reen distributed copies of the Board's by-laws and requested that the Board members be sure to keep their copy.

**Licensing Trends:** Ms. Reen reported the chart showing the number of licensees for each of the last five (5) years was provided for information. She said it would help the Board look at the effect that licensure by credentials and fee increases have on the number of licensees. Dr. Watkins requested that the next report show the numbers obtaining licensure by endorsement or credentials vs. examination. Ms. Reen said she thought those numbers would be available and will look into it.

**ADJOURNMENT**

With all business concluded, the Board meeting was adjourned at 4:25 p.m.

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Harold S. Seigel, D.D.S., President

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Sandra K. Reen, Executive Director

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Date

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Date